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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,738	10/12/2004	Mitsuaki Kawamura	04676.0142	8582

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EXAMINER

KAROL, JODY LYNN

ART UNIT	PAPER NUMBER
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1609

MAIL DATE	DELIVERY MODE
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08/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/510,738	Applicant(s) KAWAMURA ET AL.	
	Examiner Jody L. Karol	Art Unit 1609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-9, are drawn to a composition for cell proliferation containing a purine nucleic acid-related substance and a pyrimidine nucleic acid-related substance.

Group II, claims 10-21, and 36, are drawn to a method for potentiating a cell proliferation promoting effect of a purine nucleic acid-related substance by using a purine nucleic acid-related substance in combination with a pyrimidine acid-related substance.

Group III, claims 22-34 and 37, are drawn to a method for promoting cell proliferation by applying to the skin or mucosa a purine nucleic acid-related substance in combination with a pyrimidine nucleic acid-related substance.

Group IV, claim 35, is drawn to the use of purine nucleic acid-related substance and a pyrimidine nucleic acid-related substance for the preparation of a composition for cell proliferation.

Group V, claim 38, is drawn to the use of a purine nucleic acid-related substance and a pyrimidine nucleic acid-related substance for exhibiting an anti-wrinkle effect.

2. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The common technical feature shared by Groups I-V is a purine nucleic acid-related substance in combination with a pyrimidine nucleic acid-related substance.

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However, this element cannot be considered a special technical feature because it is shown in the prior art. For example, Gazzani et al. (US 5,182,269) teaches cosmetic compositions comprising depolymerized nucleic acids having hair stimulating activity (see column 1, lines 8-12). In addition, Gazzani discloses that weight amounts of both purine and pyrimidine bases are present so that the molar ratio of the two falls within a specified range (see abstract). For example, claim 1 of the patented claims teaches depolymerized nucleic acid containing adenine, guanine, thymine and cytosine. Accordingly, the unity of invention is considered to be lacking, and restriction of the invention in accordance with the rules of unity of invention is considered to be proper.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

For Groups I-V, Applicant is required to elect a purine nucleic acid-related substance. The species are as follows: adenine, adenosine, adenosine monophosphate, adenosine phosphates other than the monophosphate, hypoxanthine, inosine, inosinic acid, and salts thereof. Claims 2, 11, and 23 correspond to adenine nucleic acid-related substances. Claims 3, 13, and 25 specifically correspond to adenosine monophosphate and salts thereof. Claims 12 and 24 correspond to adenine, adenosine, adenosine phosphates, hypoxanthine, inosine, inosinic acid, and salts thereof. Claims 1, 4-10, 14-22, and 26-38 are generic.

Additionally, Applicant is required to elect a pyrimidine nucleic acid-related substance for Groups I-V. The species are as follows: uracil, uridine, uridine monophosphate, uridine phosphates other than the monophosphate, deoxyuridine, deoxyuridine phosphates, and salts thereof. Claims 2, 11, and 23 correspond to uracil nucleic acid-related substances. Claims 3, 13, and 25 specifically correspond to uridine monophosphate and salts thereof. Claims 12 and 24 correspond to uracil, uridine, uridine phosphates other than the monophosphate, deoxyuridine, deoxyuridine phosphates, and salts thereof. Claims 1, 4-10, 14-22, and 26-38 are generic.

For Groups I-III and V, Applicant is required to elect a purpose for the composition containing a purine nucleic acid-related substance and a pyrimidine nucleic acid-related substance. The species are as follows: anti-aging, moisturizing, anti-acne, skin whitening, anti-sagging, anti-dullness, anti-wrinkle, hair growth, anti-dandruff, nail

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beautifying, and wound healing. Claims 7, 19, and 32 correspond to anti-dandruff effects. Claims 7-9, 19-21, 32-34, and 37 correspond to anti-wrinkle effects. Claims 7-8, 19-20, and 31-32 correspond to anti-aging, moisturizing, anti-acne, skin whitening, anti-sagging, anti-dullness, hair growth, nail beautifying, and wound healing effects. The remaining claims either do not refer to a composition, or do not specify a purpose for the composition.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: there is no special technical features among the species as described in detail above. Purine nucleic acid-related substances and pyrimidine nucleic acid-related substances are known in the art, and therefore do not possess a special technical feature. In addition, compositions containing a purine nucleic acid and pyrimidine nucleic acid are known to stimulate hair growth (see Gazzani et al. (US 5,182,269)). Therefore, there is no special technical feature among the purposes for the composition.

4. Due to the complicated nature of the restriction, the restriction requirement is being made via written correspondence in lieu of a telephone interview.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jody L. Karol whose telephone number is (571) 274-3283. The examiner can normally be reached on 8:30 am - 5:00 pm Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Stucker can be reached on (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

JLK



**MICHAEL MELLER
PRIMARY EXAMINER**